

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009CF2075
)	EEOC NO.: 21BA90801
<b>RICHARD FINLEY</b> )	ALS NO.: 10-0166
)	
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Diane M. Viverito presiding, upon Richard Finley's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>[1]</sup> of Charge No. 2009CF2075; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following:

1. On January 5, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that on December 17, 2008, the Illinois Environmental Protection Agency ("IEPA") subjected him to harassment in retaliation for having previously filed a charge of discrimination against the IEPA on March 18, 2008, in violation of Section 6-101(A) of the Illinois Human Rights Act ("Act").<sup>1</sup> On February 2, 2010, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. On March 8, 2010, the Petitioner filed this timely Request.
2. The IEPA employed the Petitioner as a Public Service Administrator.
3. On March 18, 2008, the Petitioner filed a charge of discrimination with the Respondent against the IEPA.
4. The Petitioner was originally assigned to the Des Plaines, Illinois IEPA office. On June 2, 2008, the Petitioner was transferred to the IEPA office in Chicago, Illinois.

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<sup>[1]</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

<sup>1</sup> In its Response to the Petitioner's Request, the Respondent states the Petitioner alleged a violation of Section 2-102(A) of the Act, which forbids employment discrimination. However, the Petitioner's charge alleges retaliatory harassment, and retaliation is a violation of Section 6-101(A) of the Act.

5. In support of his charge, the Petitioner alleged that on December 17, 2008, he learned he had been removed from the Des Plaines email group. The Petitioner stated that since June of 2008, he had not received certain emails from the IEPA headquarters, such as the IEPA's newsletter and a memo from the IEPA's director to all IEPA employees. The Petitioner alleged the IEPA removed him from the Des Plaines email group and failed to place him into another email group in order to harass him in retaliation for having filed a charge of discrimination against the IEPA on March 18, 2008.
6. In his Request, the Petitioner argues the IEPA harassed him by purposely placing him in a "bogus" group email list so that he would not receive important emails. The Petitioner contends that had he missed email notification of mandatory training sessions, he could have been disciplined or even discharged for failing to attend the training sessions. Further, the Petitioner argues the IEPA is attempting to conceal its unlawful actions by claiming that human error caused the Petitioner to be placed in the non-operational email group.
7. In its Response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent determined the Petitioner did not receive certain business-related emails, specifically "group wide" emails. The Respondent argues the Petitioner's temporary failure to receive "group wide" emails did not constitute actionable harassment under the Act in violation of Section 2-102(A) because this conduct was not sufficiently severe or pervasive to alter the terms and conditions of the Petitioner's employment and create an abusive environment.

## **Conclusion**

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

Whether the Petitioner's charge is considered to allege a violation of Section 2-102(A), which prohibits employment discrimination, or a violation of Section 6-101(A), which prohibits retaliation, there is no substantial evidence that the Act was violated.

First, in order for the alleged conduct to rise to the level of actionable harassment in violation of Section 2-102(A) of the Act, the conduct must have been sufficiently severe or pervasive to alter the conditions of the Petitioner's work environment and create an abusive working environment. See Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295.

The Commission finds that the Petitioner's failure to receive certain group emails from the IEPA for approximately six-months does not rise to the level of actionable harassment.

Second, a *prima facie* case of retaliation is established by proof of the following: (1) the Petitioner engaged in a protected activity; (2) the IEPA committed an adverse action against him; and

(3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3<sup>rd</sup> dist. 2000).

Here, the Petitioner's retaliation claim is not supported by substantial evidence because there is no evidence the Petitioner suffered an adverse action. While the Petitioner complains he could have been harmed had he missed an important email, he presents no evidence that he in fact was harmed as a result of not receiving the "group wide" emails for six-months.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Illinois Environmental Protection Agency as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

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**HUMAN RIGHTS COMMISSION**

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**Entered this 27<sup>th</sup> day of October 2010**

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Diane M. Viverito